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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,084	10/02/2003	Wai Lin Siew	061255-0027	7774
9629 7590 02/03/2009 MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004				
EXAMINER				
PADEN, CAROLYN A				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
02/03/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/676,084

Applicant(s)

SIEW ET AL.

Examiner

Carolyn A. Paden

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,6-14 and 17-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6-14 and 17-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6-14 and 17-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin as further evidenced by Bailey's.

Lin discloses combining palm oil with unsaturated oils such as soybean oil, corn and sunflower oils in proportions of 9:1 to 7:3 (page 82, column 2).. The blended oils are heated to 70C to remove all of the traces of crystals in the oil blend and then cooled to 20C to 3C for crystallization and then separated by filtration. Although the fatty acid content of the unsaturated oil is not mentioned in Lin, these levels are well known in the art as evidenced by Bailey's to contain the linoleic, oleic and linolenic that is set forth in claim 1. Further applicant includes these oil sources as selected oils in claim 8. The filtration step of Lin is taken to be a low-pressure filter press in claim 2. The claims appear to differ from Lin in the recitation of the melting temperature used in step b of claim 1. It would have been obvious to adjust the melting temperature of Lin in order to provide a melted oil blend.

It is appreciated that the ratio of fatty acids in step d is not mentioned but the ratio of saturation and unsaturation in the fatty acids would have been an obvious function of the amount of each of the oils used in the starting blend. The oil combination in Lin is used the same proportions as that of the claims. Thus one would expect the desired product to be achieved by the process of Lin. Finally the use of the oils in foods would have been an obvious matter of choice with regard to the particular edible oil that was available.

It is appreciated that the crystallization time is not mentioned but it would have been within the determination of one of ordinary skill in the art to determine the most efficient crystallization time in the Lin process. It is also appreciated that the specific crystallizer of claim 23 is not mentioned but it would have been obvious to select a crystallizer that improves the efficiency of production. Apparatus limitations do not carry weight in process claims.

Applicants' arguments relating to examiner's understanding of the invention have been considered and the rejection has been re-written to attempt to clarify examiner's position. Applicants' arguments relating to the use of the oil in margarine and shortening have been considered but are

not persuasive. Shortening and margarine are known in the art to contain more than one oil source. To use the oil of Lin as one oil source would have been within the determination of one of ordinary skill in the art. Further both margarine and shortening are known in the art to be available in both hard and soft or tub forms. The structural characteristics of the final product are within the abilities of one of ordinary skill in the art. Also applicants' arguments relating to stearins are not persuasive because the claims do not provide for the production of a stearin fat fraction.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18-21, 27 and 28 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Theuer (4,282,265).

Theuer is directed to a fat for infant formulas. The oils used in claim 1 include palm oil and corn oil or soybean oil. The amounts of oleic and palmitic acid is shown in claim 1 to fall within the range of claim 27 and falls

with the range of human milk fat (column 2, lines 31-38. The fact that the fat may have been made by another process is not seen to materially effect the composition. The use of the oil in salad oil or cooking oil is not seen to materially affect the oil itself.

Claims 29-32 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Theuer (4,282,265) and see claim 1.

Claims 1-3, 6-14 and 17-28 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a process and product made to contain the oils of the claims with palm olein with IV of 60 with as much as 60% corn oil or 40% soybean oil as shown in the sentence bridging pages 8-9, does not reasonably provide enablement for any and all combinations of vegetable oil and unsaturated oil. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims.

Claims 1-3, 6-14 and 17-32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the

relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. It is unclear for the specification as to the meaning of the PO, CO, SBO, SFO, PS and Pst. There is no suggestion in the examples that show an example that uses the preferred oil combination with the desired ratio of the claims. Palm olein mixtures are not shown at all. The fatty acids in new claims 29-32 are not in the specification.

Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent basis in claim 12 for "the stearins" in claim 22.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794